IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 21313 of 2007(K)

PETITIONER:

THE MANAGING DIRECTOR,
ANJARAKKANDY FARMERS SERVICE CO-OPERATIVE BANK LTD.NO.1141, MAMBA P.O., KANNUR DISTRICT.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS:

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1. A.V.THAMBAN NAMBIAR, S/O. APPAKKUTTY NAMBIAR, CHIRUKANDATH HOUSE, P.O.MAMBA, KANNUR DISTRICT.

2. THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, (DISTRICT LABOUR OFFICER), KANNUR.

3. APPELLATE AUTHORITY, UNDER THE PAYMENT OF GRATUITY ACT AND THE REGIONAL JOINT LABOUR COMMISSIONER, KOZHIKODE.

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)No.21313 OF 2007

Dated this the 11th day of October, 2007

JUDGMENT

The petitioner is the Managing Director of a Co-operative Society. He is aggrieved by Exts.P11 and P12 orders passed by the Controlling Authority and Appellate Authority under the Payment of Gratuity Act, whereby the said authorities have directed payment of gratuity to the 1st respondent, a headload worker employed by the petitioner. The challenge is on several grounds. First contention is that the petitioner is a Co-operative Society governed by the Co-operative Societies Act and Rules which prescribe a staff pattern for the Co-operative Societies in Kerala which does not include a headload worker and therefore the 1st respondent cannot be recognized as an employee eligible to gratuity from the Society. The second contention is that the 1st respondent is governed by the provisions of the Headload workers Act, Scheme and Rules and since Headload Workers Act is a special statute, it should prevail over the Payment of Gratuity Act which is a general statute. The third contention is that the

provisions of the payment of Gratuity Act are not applicable to headloard workers. The next contention is that the Headload Workers Act, which applies to the 1st respondent does not provide for payment of gratuity. Further contention is that the retirement age of employees of the Society is 58 years whereas under the Headload Workers Act the retirement age is prescribed as sixty years. The petitioner also submits that the 1st respondent attained the age of 58 years on 18.7.95 and 60 years on 13.7.97 and therefore he could not have continue in service up to 2000, which has been taken into account by the authorities below. The petitioner also would submit that the 1st respondent is an independent contractor and as such he is not entitled to claim gratuity under the Payment of Gratuity Act.

2. I have considered the contentions of the petitioner. Simply because the staff pattern prescribed under the Co-operative Societies Act, does not include the post of 'headload worker', that does not disentitle the 1st respondent for gratuity in so far as the 1st respondent was admittedly employed as headload worker by the Society. The Society in view of the nature of its business has to necessarily engage headload workers for doing loading and unloading work. The fact that

they are getting loading and unloading work done by the headload workers is clear from their on evidence since they got agreements executed by the 1st respondent and his son for the purpose. Therefore, the petitioner is an employer and the 1st respondent is an employee. What is relevant for the purpose of payment of gratuity is whether the 1st respondent is an employee as defined under that Act and not whether the Co-operative Societies Act and Rules provide for such work. Once it is found that the 1st respondent was actually employed by the petitioner, the Society cannot escape from the liability to pay gratuity to the 1st respondent. As such there is no merit in the first contention. The second contention is that the Headload Workers Act, which is a special statute overrides Payment of Gratuity Act which is a general statue. In fact it is other way round, the Payment of Gratuity Act is the special statute and Headload Workers Act is the general statute. The fact that the Headload Workers Act does not contain any provision for payment of gratuity does not mean that Payment of Gratuity Act is not applicable to headload workers. Even the headload worker, if he is an employee defined under the Payment of Gratuity Act, is certainly entitled to gratuity under

the Act.

3. The fact that the retirement age of employees of the Society is 58 years and Headload workers Act fixes the age of retirement as 60 years does not change the situation at all. First of all, the prescription of retirement age of 60 years is for the purpose of that Act and in private employment the employer would be free to fix the retirement age of its employees. The fact that the retirement age of the employees of the Society is 58 years does not affect the situation in so far as admittedly the 1st respondent is not an employee as per the staff pattern approved under the Kerala Co-operative Societies Act and Rules. He was only a headload worker out side the purview of the Kerala Co-operative Societies Act and Rules and therefore, the retirement age fixed therein cannot apply to the petitioner. In any event it has been categorically found that the 1st respondent worked in the Society up to the year 2000 after extracting work from the petitioner for the period up to 2000. It was open to the petitioner to superannuate the petitioner if he had crossed the retirement age, which the petitioner did not. Therefore, the petitioner cannot escape from the liability to pay gratuity corresponding to the period of

service put in by the 1st respondent.

4. Regarding the question as to whether the 1st respondent is an independent contractor or an employee is a question of fact which has been found by the authorities below on the basis of evidence before them against the petitioner. This Court exercising jurisdiction under Article 226 of the Constitution of India cannot re-appraise the evidence to come to a different conclusion.

5. As such the petitioner has not made out any acceptable ground for interference with the impugned orders.

Accordingly, the writ petition is dismissed.

S. SIRI JAGAN, JUDGE

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